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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

No. 79-1233

STUCKEY'S STORES, INC., a Delaware Corporation, Individually and as a Representative on behalf of its Franchisees in the State of New Mexico,

Appellant,

v.

FRED O'CHESKEY, Chief Highway Administrator, State Highway Department,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF NEW MEXICO

MOTION TO DISMISS OR AFFIRM

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IN THE

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OCTOBER TERM, 1979

No. 79-1233

STUCKEY'S STORES, INC., a Delaware Corporation, Individually and as a Representative on behalf of its Franchisees in the State of New Mexico,

Appellant,

v.

FRED O'CHESKEY, Chief Highway Administrator, State Highway Department,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF NEW MEXICO

MOTION TO DISMISS OR AFFIRM

The Appellee moves the Court to dismiss the appeal herein or in the alternative to affirm the judgment of the Supreme Court of New Mexico on the ground that the questions on which the decision of the cause depends have been decided by the Supreme Court of the State of New Mexico in accordance with the provisions of the United States Constitution and are so unsubstantial as to require no further argument or review by this Court.

STATEMENT OF THE CASE[1]

This action was filed in the Santa Fe, New Mexico State District Court by Stuckey's Stores, Inc. (hereinafter referred to as Stuckey's) on August 9, 1976 in response to the threatened removal of certain of its highway billboards by the New Mexico State Highway Department (hereinafter referred to as the State Highway Department), who was acting pursuant to the authority of the authority of the New Mexico Highway Beautification Act § 67-12-1, *et seq.* (N.M.S.A., 1978).

The complaint alleged a number of constitutional deficiencies in the New Mexico Highway Beautification Act and also alleged the grounds of waiver and estoppel as bars to the removal of some of the billboards involved. Following a bench trial, the trial court ruled in favor of the State Highway Department (who had been sued through its Chief Highway Administrator, Fred O'Cheskey).

The decision was appealed by Stuckey's to the New Mexico Supreme Court on all grounds raised by the original complaint. The Supreme Court held for the State Highway Department as to all constitutional challenges and held for Stuckey's as to the waiver and estoppel questions. The New Mexico Supreme Court subsequently denied the motions for rehearing filed by both parties. *Stuckey's Stores, Inc. v. O'Cheskey,* 93 N.M. 312, 600 P.2d 258 (1979).

On February 8, 1980, Stuckey's filed a Jurisdictional Statement in this Court in which it appealed from the

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[1]Appellee by filing this separate Statement of the Case intends to indicate its strong disagreement with Appellant's Statement of the Case, particularly with Appellant's characterization of the evidence elicited at trial.

New Mexico Supreme Court's decision solely on First Amendment Grounds.

The statute in question, the New Mexico Highway Beautification Act (*see* Appendix 1), applies to Interstate and Primary highways located in the State of New Mexico. It sets forth a regulatory scheme which prohibits all Interstate and Primary highway billboards except the following as listed at § 67-12-4 (N.M.S.A., 1978):

> "(1) directional and other official signs and notices authorized or required by laws, including, but not limited to, signs and notices pertaining to houses of worship, natural wonders and scenic and historic attractions;
>
> "(2) signs, displays and devices advertising the sale or lease of property upon which they are located;
>
> "(3) signs, displays and devices advertising activities conducted on the property upon which they are located, provided that the bisection of a parcel of land by a highway right-of-way acquisition shall not in itself be construed as converting the property into more than one parcel;
>
> "(4) signs, displays and devices located in areas which are zoned as industrial or commercial under authority of law;
>
> "(5) signs, displays and devices located within six hundred sixty feet of the nearest edge of the right-of-way, in unzoned industrial or commercial areas as defined by regulations promulgated by the commission, provided that no area shall be considered to be an unzoned commercial or industiral area unless and until a regulation defining the area as unzoned commercial or industrial is promulgated by the commission; and

"(6) signs lawfully in existence on October 22, 1965, determined by the state highway commission, subject to any necessary federal approval, to be landmark signs of historic or artistic significance worthy of preservation including signs on farm structures or natural surfaces."

In addition to the above six exceptions, the State Highway Department has initiated a LOGO program for all Interstate and access-controlled Primary highways. Briefly stated, the LOGO program provides signboards located approximately one-half mile to approximately one mile from the exit gores of eligible rural Interstate and access-controlled Primary highways. Each LOGO site is provided with up to four signboards as is appropriate; one with the heading "gas," one with the heading "lodging," one with the heading "food" and one entitled "camping." Qualifying businesses located near the LOGO site offering one or more of the above services may pay the Department a fee and have their logo placed on the appropriate signboard or signboards. Each signboard has space for four logos, except the GAS signboard which can accommodate six logos.[2]

Therefore, for a roadside business such as the ones operated by Stuckey's, selling food, gasoline and curios, roadside advertising is restricted to the following:

1. On-premise billboards;

[2]Appellant makes a misstatement at p. 8 of its Jurisdictional Statement when it indicates that the LOGO program is restricted to Interstate highways. Such program also extends to access-controlled primary highways. Additionally, contrary to Appellant's allegation, the LOGO program is sanctioned by State law, specifically by Section 67-12-4A(1) N.M.S.A. (1978 Comp.) which provides for directional signs. Appellee is granted authority to erect such signs in order to guide traffic by Sections 66-7-101 and 66-7-102 N.M.S.A. (1978 Comp.).

2. Billboards located within 1,000 feet of the boundaries of the property used for the business (unzoned commercial or industrial areas as defined by state regulation, Outdoor Advertising Rules and Regulations Section 1050.00(29)) (*see* Appendix B);
3. Billboards located in zoned commercial and industrial areas;[3] and
4. LOGO signs advertising "food" and "gas" located prior to the exit gore near which the Stuckey's Store is located.

ARGUMENT

I.

THE DECISION HEREIN BY THE NEW MEXICO SUPREME COURT IS IN ACCORD WITH THE FIRST AMENDMENT.

The restrictions imposed by the New Mexico Highway Beautification Act are clearly a "content blind" form of regulation of speech. The Act merely prescribes the place and manner in which the form of speech here involved, highway billboards, may be displayed. As such, the law is not violative of the First Amendment so long as it satisfies the time, place and manner test set forth by this Court in *Virginia State Board of Pharmacy, et al. v. Virginia Citizens Consumer Council, et al.*, 425 U.S. 748, 96 S. Ct. 1817, 48 L. Ed. 2d 346 (1976); and in *Linmark Associates, Inc. v. Willingboro*, 431 U.S. 85, 97 S. Ct. 1614, 52 L. Ed. 2d 155 (1977), to wit;

[3]The trial court made a Finding of Fact that the combination of on-premise and zoned and unzoned commercial and industrial area signs ". . . afford a reasonable means of informing the motorist of such highways of the presence or location of a Stuckey store or of the goods, services, conveniences or facilities available to him at such store."

(1) the restriction on speech must be justified without reference to the content of the regulated speech;

(2) the restriction must serve a significant governmental interest; and

(3) in so doing the restriction must leave open ample alternative channels for communication of the information.

The New Mexico Supreme Court in applying the above test found that the New Mexico Highway Beautification Act met each of its three criteria. First, the court noted at p. 265 that the restrictions imposed by the Beautification Act are "justified without reference to the content of the regulated speech" since "None of the Act's stated purposes—promotion of public safety, health, welfare, convenience and enjoyment of public travel, protection and enhancement of the scenic beauty of lands bordering the public highways—are related to a particular message of such signs." Secondly, significant governmental interests were found to be furthered by the Act. One such interest set out in the preamble to the New Mexico Highway Beautification Act is "public safety" (§ 67-12-3, N.M.S.A. (1978 Comp.)). It is simply common sense that highway billboards provide distractions to the drivers from the business of driving. As stated in *Newman Signs, Inc. v. Hjelle,* 268 N.W.2d 741, 757 (N.D. 1978), *appeal dismissed,* 440 U.S. 901, 99 S. Ct. 1205, 59 L. Ed.2d 449, quoting *Whitmier and Ferris Co. v. State,* 20 N.Y.2d 413, 284 N.Y. Supp. 2d 313, 315, 230 N.E.2d 904, 905 (1967):

> "'If people did not look at the signs, advertisers would not find it profitable to put them there. It was within the competence of the Legislature to determine that the safety of the traveling public is

> endangered by the distraction of the attention of drivers of automobiles under these circumstances.'"

To a similar effect is *Moore, et al. v. Ward,* 377 S.W.2d 881 (Ky. 1964), at page 886:

> "Obviously a billboard is a distracting device. It diverts and is designed to divert the motorist's attention from the highway. In the public interest the legislature could weigh the right of the motorist to be free of such distracting signs. It could determine they impair the motorist's enjoyment of the highway."

Another interest stated in the preamble to the New Mexico Highway Beautification Act and relied on by the New Mexico Supreme Court was the preservation and enhancement of ". . . the scenic beauty of lands bordering public highways, ..." § 67-12-3, N.M.S.A. (1978 Comp.). Billboards are clearly a form of obtrusive visual blight detracting from the scenic value of the land. As stated by Mr. Justice Brandeis in *Packer Corp. v. Utah,* 285 U.S. 105, 110, 52 S. Ct. 283, 274, 76 L. Ed. 643 (1932):

> "Billboards, streetcar signs and placards and such are in a class by themselves . . . . Advertisements of this sort are constantly before the eyes of the observers on the streets . . . to be seen without the exercise of choice or volition on their part. Other forms of advertising are ordinarily seen as a matter of choice on the part of the observer, ... The radio can be turned off, but not so the billboard . . . ."

The question of aesthetics as a valid ground on which to base a billboard regulation was effectively addressed by the federal district court in *John Donnelly & Sons, et al. v. Mallar,* 453 F. Supp. 1272 (D.C. Maine 1978), at p. 1278:

"The emerging majority position, however, and the one to which this Court subscribes, is that the preservation and promotion of aesthetic standards do serve as an adequate basis for comprehensive anti-billboard legislation such as the Maine Act. [Citations omitted.] As Mr. Justice Douglas presciently observed several years ago:

> "'The concept of public welfare is broad and inclusive. . . . The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the Legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled.'

"*Berman v. Parker,* 348 U.S. 26, 33, 75 S. Ct. 98, 102, 99 L. Ed. 27 (1954); see also *Belle Terre v. Boraas,* 416 U.S. 1, 5-6, 94 S. Ct. 1536, 39 L. Ed. 2d 797 (1974). The nation's recently-awakened and growing concern for the quality of its environment and the various and widespread steps taken by individuals, citizen groups, and governmental bodies to protect and enhance natural resources demonstrate beyond reasonable question that the Mine Act serves substantial governmental interests through the preservation of aesthetic values." [At page 1278.]

A final governmental interest used by the New Mexico Supreme Court in upholding the New Mexico Highway Beautification Act was based on the protection of "the public investment in public highways." The court here recognized the cold hard economic fact that by virtue of 23 U.S.C. § 131(b) (*see* Appendix C) should New Mexico fail to control highway billboards in the manner required by this federal legislation, it would lose ten percent of its federal highway monies, a vital concern in

a relatively poor and sparsely populated state responsible for a large system of Interstate and Primary highways. The fact that one of the effects of the New Mexico Highway Beautification Act is to economically benefit the taxpayers of the State is a clearly valid governmental interest which has been used by other courts to help validate billboard regulations; *John Donnelly & Sons, et al. v. Mallar, supra*; *Moore, et al. v. Ward, supra*; *General Outdoor Adv. Co. v. Department of Public Wks.,* 289 Mass. 149, 193 N.E. 799 (1935).

The third prong of the time, place and manner test, *i.e.,* the availability of alternative means of communication was also addressed by the New Mexico Supreme Court which found that under the New Mexico Highway Beautification Act, not only could businesses such as Stuckey's place billboards on its premises, in unzoned commercial or industrial areas and in zoned commercial or industrial areas, but there is also available to rural businesses such as Stuckey's the possibility of receiving LOGO signs. The court noted that at the time of trial four of the ten Stuckey's Stores had requested and received LOGO signing.

It clearly appears from the New Mexico Supreme Court's opinion that such court assiduously applied the "time, place, and manner" test to the New Mexico Highway Beautification Act and found such Act to comply with such test's requirements. It is respectfully submitted that such test was properly applied by the New Mexico Supreme Court and that no First Amendment violation exists in the New Mexico Highway Beautification Act.

II.

THE HOLDING OF THE NEW MEXICO SUPREME COURT IS CONSISTENT WITH PRIOR CASES DECIDED BY THIS COURT AND BY OTHER STATE AND FEDERAL COURTS.

The New Mexico Supreme Court is hardly alone in validating billboard laws and regulations in the face of a First Amendment challenge but is in fact supported by a virtual unanimity in reported opinions. The Supreme Court of North Dakota in *Newman Signs, Inc. v. Hjelle, supra,* upheld the constitutionality of the North Dakota Highway Beautification Act (N.D.C.C. 24-17-01, *et seq.*), an act which is almost the mirror image of the New Mexico Highway Beautification Act. The North Dakota Supreme Court in applying the "time, place and manner test" held that the Act there under consideration was not a content regulation but ". . . merely provides restrictions on the place and manner of erection of the outdoor advertising signs" (at p. 760). The Court in *Hjelle* then stated that billboard advertising ". . . has been recognized to be an intrusion on the privacy of those individuals who use the highways" and that although ". . . no empirical evidence was presented to either support or refute the relationship between billboards and traffic safety, we are not prepared to say that such a relationship does not exist, especially when the Legislature has found that it does . . . ." It is ". . . reasonable to assume that the existence of highway billboards could have a detrimental effect on traffic safety"[4] (at p. 761).

[4]One of the arguments made in Stuckey's Jurisdictional Statement is that the State Highway Department failed to introduce evidence supporting the relationship of billboards to traffic safety. It should be noted that, conversely, Stuckey's offered no evidence to disprove the existence of such a relationship. In light of the [footnote continued]

The court also noted the State's legitimate interest in ". . . protecting, preserving, and enhancing the aesthetic quality of its land . . ." and its interest in ". . . protecting the privacy of those individuals who use the highways" (at p. 761). The Court then compared these interests with Newman's interests, noting the fact that there existed alternative means for Newman to communicate its advertising message ". . . one such alternative means being the continuation of billboard advertising within the confines of the statutes" (at p. 761). The Court concluded that:

> "The interests of Newman are minimal in comparison with the public interest involved and the effect that the regulations have on the public and the businesses contracting for advertising space is not so substantial as to outweigh the State's interest in providing a safe and visually pleasing environment." [At p. 761-762.]

Thus, the billboard regulation, the issues involved and the court's analysis of the First Amendment question is

lack of testimony on this subject, the New Mexico Supreme Court relied on the legislature's determination at Section 67-12-3, N.M.S.A. (1978), that "public safety" was furthered by the New Mexico Highway Beautification Act (a similar determination was made by Congress at 23 U.S.C. 131(a)). As is shown by this quotation, the North Dakota Supreme Court, when similarly faced with a lack of empirical evidence, relied on its legislature's finding of a relationship between billboards and traffic safety.

The New Mexico and North Dakota Supreme Courts, in relying on this kind of legislative determination, do no more than give the legislature deference in regard to the determination of the public interest accorded to it by this Court in *Berman v. Parker, supra,* when it stated:

> "Subject to specific constitutional limitations, when the legislature has spoken, the public interest has been declared in terms well-nigh conclusive. In such cases, the legislature, not the judiciary, is the main guardian of the public needs to be served by social legislation. . . ."

almost identical in the instant case and in *Newman Signs, Inc. v. Hjelle, supra.* As in the instant case the Plaintiff there appealed the decision of the state court to this court (at 440 U.S. 901, 99 S. Ct. 1205, 59 L. Ed. 2d 449). This Court dismissed the *Newman* appeal for want of a substantial federal question, and, of course, such a dismissal constitutes a decision on the merits of the case, *Hicks v. Miranda,* 422 U.S. 332, 95 S. Ct. 2281, 45 L. Ed. 2d 225 (1975). It is respectfully requested that this Court similarly dismiss the instant appeal.

This Court has also dismissed for want of a substantial federal question the Plaintiff's appeal in *Suffolk Outdoor Advertising Co. v. Hulse,* 43 N.Y.2d 483, 402 N.Y.S.2d 368, 373 N.E.2d 263 (N.Y. 1977), *appeal dismissed,* 439 U.S. 808, 99 S. Ct. 66, 58 L. Ed. 2d 101. In *Suffolk* owners of billboards appealed from the enforcement of a local zoning ordinance which required the non-compensated removal of all off-premises or non-accessory billboards. The Court of Appeals of New York in upholding the First Amendment validity of the ordinance stated at p. 265 that the "regulation of aesthetics" which constituted the purpose of the ordinance was a "significant governmental interest" and "Since the challenged ordinance makes no attempt to regulate the content of the commercial speech appearing on billboards, but rather regulates only the place and manner in which billboards may be maintained, we conclude that the ordinance does not infringe the right to free speech guaranteed by the First Amendment."

Similarly, in *Veterans of For. Wars, Etc. v. Steamboat Springs,* 575 P.2d 835 (Colo. 1978), *appeal dismissed,* 439 U.S. 809, 58 L. Ed. 2d 101, this Court dismissed, for lack of a substantial federal question, the appeal on First Amendment grounds based on the alleged unconsti-

tutionality of a comprehensive sign code which prohibited most off-premises signs. The Supreme Court of Colorado at p. 840 held that such a regulation promotes safety since "Distracting signs may serve to break the concentration of those using the roads with resultant loss of life and property . . . ." The Colorado Court stated at pp. 840-841 that the ordinance was in furtherance of a "pleasant and orderly environment" which was within the "legitimate scope of a municipality's police power." The court also noted the "intrusive nature of signs and billboards" and at p. 841 analogized billboards to the sound trucks whose prohibition was upheld in *Kovacs v. Cooper,* 336 U.S. 77, 69 S. Ct. 448, 93 L. Ed. 513 (1949). The court at pp. 841-842 concluded that, "The city's classification of on premise and off premise signs is reasonable and accommodates the interests of the property owner and the municipality and imposes upon First Amendment rights to a permissible extent."

This Court also dismissed Plaintiff's appeal for lack of a substantial federal question in *State v. Lotze,* 92 Wash. 2d 52, 593 P.2d 811 (Wash. 1979), *appeal dismissed,* ___ U.S. ___, 100 S. Ct. 257, 62 L. Ed. 2d 177. Such case involved the State of Washington's Scenic Vistas Act of 1971 (R.C.W. 47.42), an Act quite similar to the New Mexico Highway Beautification Act. Like the New Mexico Act the Scenic Vistas Act prohibited all highway billboards except "directional signs, official signs, signs advertising the sale or lease of property upon which they are located, signs advertising activities conducted on the property on which they are located . . ." and signs ". . . within commercial or industrial areas . . ." (at p. 813; *compare,* R.C.W. 47.42.040 with N.M.S.A., Section 67-12-4 (1978 Comp.)). The Washington Supreme Court in *Lotze* held at p. 813 that "time, place

and manner" regulations "stand on different footing than laws prohibiting speech altogether" and concluded that:

> ". . . R.C.W. 47.42 as applied to appellants' billboards does not violate their First Amendment rights of free speech. The traffic safety rationale upheld in *Markham Advertising Co. v. State, supra,* and not refuted at trial in these cases is sufficiently compelling to outweigh the minimal restraint on appellants. The statutory scheme represents a reasonable place and manner limitation on speech leaving ample alternative channels of communication for appellants. Appellants' speech is not in any way being controlled as to content; its stricture is narrowly confined to place and manner. The entire panoply of means to communicate their views is open to appellants except for the limited restrictions of R.C.W. 47.42." [At p. 815.]

Finally the cited case in the above quotation, *Markham Advertising Co. v. State,* 439 P.2d 248, 73 Wash. 2d 405, 439, *appeal dismissed,* 393 U.S. 316, 89 S. Ct. 553, 21 L. Ed. 2d 512, *rehearing denied,* 393 U.S. 1112, 89 S. Ct. 854, 21 L. Ed. 2d (1968), was also dismissed by this Court for lack of substantial federal question and also considered the First Amendment constitutionality of R.C.W. 47.42 as there applied to commercial billboards. The Washington Supreme Court in *Markham* ruled that the:

> ". . . intrusive quality of highway outdoor advertising coupled with the hazard it poses to traffic safety and its purely commercial nature, all persuade us that R.C.W. 47.42 is a reasonable regulation which does not violate the First Amendment."

Following the dismissal of the appeal in *Markham Advertising Co. v. State, supra,* this Court in *Young v.*

American Mini Theaters, 427 U.S. 50, 96 S. Ct. 2440, 49 L. Ed. 2d 310 (1976), held as follows at pp. 68-69:

> "We have recently held that the First Amendment affords some protection to commercial speech. We have also made it clear, however, that the content of a particular advertisement may determine the extent of its protection. A public rapid transit system may accept some advertisements and reject others. *A state statute may permit highway billboards to advertise businesses located in the neighborhood but not elsewhere,* and regulatory commissions may prohibit businessmen from making statements which, though literally true, are potentially deceptive. The measure of constitutional protection to be afforded commercial speech will surely be governed largely by the content of the communication." [Emphasis added.]

The emphasized clause is referenced to a footnote citing *Markham Advertising Co. v. State, supra.*

Not only has this Court dismissed the appeals in *Markham Advertising Co. v. State, supra*; *State v. Lotze, supra*; *Suffolk Outdoor Advertising Co. v. Hulse, supra*; *Veterans of For. Wars, Etc. v. Steamboat Springs, supra*; and *Newman Signs, Inc. v. Hjelle, supra,* thereby indicating the unsubstantiality of First Amendment claims against laws such as the New Mexico Highway Beautification Act, but it has emphasized time and again as it does in the above-cited passage from *Young v. American Mini Theaters, supra,* that while commercial speech such as is involved here is afforded some protection by the First Amendment, that protection is considerably less than the protection afforded non-commercial speech. In *Virginia State Board of Pharmacy, et al. v. Virginia Citizens Consumer Council, et al., supra,* this Court stated at note 24, pp. 771-772 that:

"In concluding that commercial speech enjoys First Amendment protection, we have not held that it is wholly undifferentiable from other forms. *There are commonsense differences between speech that does 'no more than propose a commercial transaction,' Pittsburgh Press Co. v. Human Relations Comm'n,* 413 U.S., at 385, and other varieties. Even if the differences do not justify the conclusion that commercial speech is valueless, and thus subject to complete suppression by the State, they nonetheless suggest that *a different degree of protection is necessary* to insure that the flow of truthful and legitimate commercial information is unimpaired." [Emphasis added.]

Ohralik v. Ohio State Bar Association, 436 U.S. 447, 56 L. Ed. 2d 444, 98 S. Ct. 1912, *rehearing denied,* ___ U.S. ___, ___ S. Ct. ___, 58 L. Ed. 2d 198 (1978), posed even more clearly this important distinction when this Court stated at pp. 453-454 that:

"We have not discarded the 'commonsense' distinction between speech proposing a commercial transaction which occurs in an area traditionally subject to government regulation, and other varieties of speech. *Ibid. To require a parity of constitutional protection for commercial and noncommercial speech alike could invite dilution, simply by a leveling process, of the force of the Amendment's guarantee with respect to the latter kind of speech. Rather than subject the First Amendment to such a devitalization, we instead have afforded commercial speech a limited measure of protection, commensurate with its subordinate position in the scale of First Amendment values,* while allowing modes of regulation that might be impermissible in the realm of noncommercial expression. [Citations omitted.] . . . the state

does not lose its power to regulate commercial activity deemed harmful to the public whenever speech is a component of that activity. Neither *Virginia Pharmacy* nor *Bates* purported to cast out on the permissibility of these kinds of commerical regulation." [Emphasis added.]

Finally, not only is it clear from the foregoing that commercial speech such as is found on Stuckey's billboards is accorded a much lesser degree of protection and that each of the five First Amendment billboard cases that have come before this Court have been dismissed for lack of a substantial federal question, but there is virtual unanimity in cases decided by state and lower federal courts that billboard regulations such as New Mexico's do no violence to the First Amendment. ***John Donnelly and Sons v. Outdoor Advertising Bd.,*** 339 N.E.2d 709 (Mass. 1975); ***John Donnelly & Sons, et al. v. Mallar, supra***; ***Donnelly Advertising Corp. v. City of Baltimore,*** 279 Md. 660, 370 A.2d 1127 (Md. 1977); ***Metromedia, Inc. v. City of San Diego,*** 23 Cal. 3d 762, 154 Cal. Rptr. 212, 592 P.2d 728 (1979); ***Ackerley Communications, Inc. v. City of Seattle,*** 602 P.2d 1177 (Wash. 1979); ***Ghaster Properties, Inc. v. Preston,*** 200 N.E.2d 328, 176 Ohio St. 425 (1964); ***Howard v. State Dept. of Hwys. of Colorado,*** 478 F.2d 581 (10th Cir. 1973); ***General Outdoor Adv. Co. v. Department of Public Wks., supra***; ***Markham Advertising Co. v. State, supra***; ***Suffolk Outdoor Advertising Co. v. Hulse, supra***; ***State v. Lotze, supra***; ***Veterans of For. Wars, Etc. v. Steamboat Springs, supra***; ***Newman Signs, Inc. v. Hjelle, supra.***

CONCLUSION

It is respectfully submitted that the decision of the New Mexico Supreme Court does not present a substan-

tial federal question for this Court to review and this appeal should be dismissed or the judgment of the New Mexico Supreme Court affirmed.

Respectfully submitted,

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APPENDIX

APPENDIX A

EXCERPTS FROM THE NEW MEXICO HIGHWAY BEAUTIFICATION ACT

67-12-1. Short Title.

This act [67-12-1 to 67-12-14 N.M.S.A. 1978] may be cited as the "Highway Beautification Act."

67-12-2. Definitions.

As used in the Highway Beautification Act [67-12-1 to 67-1-14 N.M.S.A. 1978]:

A. "interstate system" means that portion of the national system of interstate and defense highways located within the state as may now or hereafter be officially so deignated by the commission and approved pursuant to Title 23, United States Code;

B. "primary system" means that portion of connected main highways located within this state as may now or hereafter be officially so designated by the commission and approved pursuant to Title 23, United States Code;

C. "commission" means the state highway commission;

D. "outdoor advertising" means any outdoor sign, display, light, device, figure, painting, drawing, message, plaque, poster, billboard or other object which is designed, intended or used to advertise or inform, any part of which is located within six hundred sixty feet of the nearest edge of the right-of-way, and is visible from the main-traveled way of the interstate or primary systems or those located beyond six hundred sixty feet of the right of way, located outside of urban areas, visible from the main-traveled way of the system and erected with

the purpose of their message being read from such main-traveled way;

E. "safety rest area" means a site established and maintained by or under public supervision or control for the convenience of the traveling public within or adjacent to the right-of-way of the interstate or primary systems;

F. "information center" means a site established and maintained at a safety rest area for the purpose of informing the public of places of interest within the state and providing other information the commission considers desirable;

G. "junk" means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, debris, waste or junked, dismantled or wrecked automobiles or parts thereof, iron, steel and other old or scrap ferrous or nonferrous material;

H. "automobile graveyard" means any establishment or place of business maintained, used or operated for storing, keeping, buying or selling wrecked, scrapped, ruined or dismantled motor vehicles or motor vehicle parts;

I. "junkyard" means any establishment or place of business maintained, used or operated for storing, keeping, buying or selling junk, or for the maintenance or operation of an automobile graveyard any portion of which is located within one thousand feet of the nearest edge of the right-of-way interstate or primary systems and it includes garbage dumps and sanitary fills; and

J. "urban area" means an area including and adjacent to a municipality or other urban place having a population of five thousand or more, as determined by the latest available federal census, within boundaries to be fixed by the state highway commission, subject to any

necessary approval by any federal agency, department or personnel.

67-12-3. Public Policy.

In order to promote public safety, health, welfare, convenience and enjoyment of public travel, to protect the public investment in public highways and to preserve and enhance the scenic beauty of lands bordering public highways, it is the public policy of this state to regulate the erection and maintenance of outdoor advertising and the establishment, operation and maintenance of junkyards in areas adjacent to the interstate and primary systems in accordance with the Highway Beautification Act [67-12-1 to 67-12-14 N.M.S.A. 1978]. The legislature finds that regulation of outdoor advertising and junkyards is for a highway purpose.

67-12-4. Outdoor Advertising Prohibited; Exceptions.

A. No outdoor advertising shall be erected or maintained except:

(1) directional and other official signs and notices authorized or required by law, including, but not limited to, signs and notices pertaining to houses of worship, natural wonders and scenic and historic attractions;

(2) signs, displays and devices advertising the sale or lease of property upon which they are located:

(3) signs, displays and devices advertising activities conducted on the property upon which they are located, provided that the bisection of a parcel of land by a highway right-of-way acquisition shall not in itself be construed as converting the property into more than one parcel;

(4) signs, displays and devices located in areas which are zoned as industrial or commercial under authority of law;

(5) signs, displays and devices located within six hundred sixty feet of the nearest edge of the right-of-way, in unzoned industrial or commercial areas as defined by regulations promulgated by the commission, provided that no area shall be considered to be an unzoned commercial or industrial area unless and until a regulation defining the area as unzoned commercial or industrial is promulgated by the commission; and

(6) signs lawfully in existence on October 22, 1965, determined by the state highway commission, subject to any necessary federal approval, to be landmark signs of historic or artistic significance worthy of preservation including signs on farm structures or natural surfaces.

B. All outdoor advertising shall conform with standards and specifications, shall bear permits and have paid therefor permit fees, as required by the Highway Beautification Act [67-12-1 to 67-12-14 N.M.S.A. 1978] and regulations promulgated pursuant thereto or authorized thereby, except that permits shall not be required or fees paid for outdoor advertising included in Paragraphs (1), (2) and (3) of Subsection A of this section.

C. Nothing herein to the contrary withstanding, any outdoor advertising which was lawfully in existence on the effective date of the Highway Beautification Act and has continued to so exist may remain in place until the outdoor advertising is acquired by the commission, or condemnation in relation thereto is commenced by the commission, whichever first occurs, but only if and so long as all provisions of Subsection B of this section are complied with.

67-12-5. Outdoor Advertising; Regulations; Permits.

A. The commission may promulgate regulations concerning:

(1) the definition of unzoned industrial or commercial areas adjacent to the interstate and primary systems;

(2) the removal of outdoor advertising so required or authorized under the Highway Beautification Act [67-12-1 to 67-12-14 N.M.S.A. 1978];

(3) permits for the erection and maintenance of outdoor advertising; and

(4) standards and specifications pertaining to outdoor advertising, including, but not limited to, construction, maintenance, spacing, lighting, size and location.

B. Regulations promulgated by the commission under this section shall be consistent with the public policy of this state as declared in the Highway Beautification Act and national standards promulgated pursuant to Title 23, United States Code.

C. The commission shall establish and collect uniform fees for the issuance of permits for outdoor advertising. The fees shall not be more than the actual cost to the commission of enforcement and administration of this act, or five dollars ($5.00) per year, whichever is greater, for each sign, display and device. All fees so collected shall be paid to the state treasurer for credit to the state road fund.

D. Any permit fee payable for the years 1966 through 1971 inclusive shall be deemed timely paid if, but only if, the fee is received by the commission prior to July 1, 1971. For the year 1972 and every year thereafter, the

permit fee shall be deemed timely paid if, said fee is received by the commission on or before the first day of the year for which said fee is being paid. Failure of timely payment of the permit fee for any outdoor advertising except those included in Subsections A(1), A(2) and A(3) of Section 67-12-4 N.M.S.A. 1978, shall render the outdoor advertising subject to removal by the commission without any compensation whatsoever and at the expense of the owner of the outdoor advertising.

67-12-6. Outdoor Advertising; Acquisition; Compensation; Removal.

A. The Commission may acquire by agreement or condemnation, all outdoor advertising and property rights pertaining thereto, and remove the outdoor advertising if the outdoor advertising, at the time of said acquisition;

(1) bears the requisite permit;

(2) has timely paid all permit fees, past and present, required in connection with the erection and maintenance thereof;

(3) conforms with standards, specifications and requirements contained in regulations promulgated by the commission; and

(4) was lawfully in existence on the effective date of the Highway Beautification Act [67-12-1 to 67-12-14 N.M.S.A. 1978] and has continued to so exist, or was lawfully erected subsequent to said effective date.

The condemnation shall be exercised by eminent domain in the manner provided by law, and each interested party shall have the right to a separate trial as to the respective interests involved.

B. Whenever outdoor advertising and property rights pertaining thereto are acquired by the commission pursuant to Subsection A of this section:

(1) the owner of the outdoor advertising shall be paid just compensation by the commission equal to the fair market value of the outdoor advertising which is to be deemed a trade fixture; and

(2) the owner of the land upon which the outdoor advertising is located shall be paid just compensation equal to the value of his right to have the outdoor advertising erected and maintained on the land.

C. The right to compensation as provided in Subsection B of this section shall not be affected solely by the failure of any outdoor advertising to conform to standards, specifications and requirements contained in regulations promulgated by the commission relating to any subject other than permits or permit fees unless the commission has given notice by certified mail to the owner of the land upon which the outdoor advertising is located, and to the owner of the outdoor advertising if his name appears thereon, advising of the failure to conform and ordering that the outdoor advertising be made to so conform or be removed within thirty days from the date of such notice. If the failure to conform is corrected within the said thirty days then the failure to conform shall be deemed cured for all purposes; if, however, the defect is not corrected within the thirty days, the commission may thereafter remove the outdoor advertising at the expense of the owner of the outdoor advertising without any compensation whatsoever. This subsection specifically does not apply in any manner to permit fees, and no notice whatsoever shall be required in connection with the permit fees.

D. Compensation shall not include any element of damages which is not subject to federal aid participation under the federal Highway Beautification Act of 1965, as has been or may be hereafter amended or superseded, or otherwise.

E. In any case where outdoor advertising has been removed under the Highway Beautification Act, and the removal is compensable under that act, but the commission has not paid just compensation or instituted condemnation proceedings therefor, the owner of the outdoor advertising, or the owner of the land upon which it is located, or both, may bring actions against the commission as provided in Section 42-1-23 N.M.S.A. 1978, for recovery of such compensation.

F. All outdoor advertising other than that meeting all the requirements of Subsection A of this section is declared to be a public nuisance and the contravention of law. Therefore and otherwise, the commission may remove or cause the removal of all outdoor advertising other than that meeting all the requirements of Subsection A of this section which removal shall be without any compensation whatsoever and at the expense of the owner of the outdoor advertising.

G. Removal of outdoor advertising by or at the request of the commission, its agents or employees, in compliance with the Highway Beautification Act, does not subject such removal or the persons performing it to criminal prosecution or give rise to any liability to any person or entity for the injury, loss or destruction of any property which occurs in connection with the removal.

67-12-7. Outdoor Advertising; Safety Rest Areas; Information Centers.

In order to provide information in the specific interest of the traveling public, the commission may authorize outdoor advertising at safety rest areas and at information centers.

* * *

67-12-12. Powers of Commission.

The commission may:

A. promulgate regulations it deems necessary to implement and enforce the Highway Beautification Act [67-12-1 to 67-12-14 N.M.S.A. 1978]; and

B. enter into agreements with the secretary of commerce pursuant to Title 23, United States Code, relating to the control of outdoor advertising and junkyards in areas adjacent to the interstate and primary systems, and to take action in the name of the state to comply with the terms of the agreements.

67-12-13. Construction of Act.

Nothing in the Highway Beautification Act [67-12-1 to 67-12-14 N.M.S.A. 1978] affects the provisions of any lawful ordinance or regulation which is more restrictive than the Highway Beautification Act.

67-12-14. Acquisition of Land for Scenic Beauty.

A. The commission may acquire and improve land necessary for the restoration, preservation and enhancement of scenic beauty within and adjacent to the interstate and primary systems, including acquisition for publicly owned and controlled rest and recreation areas and sanitary and other facilities within or adjacent

to the right-of-way and reasonably necessary to accommodate the traveling public.

B. The interest in land acquired and maintained under this section may be the fee simple or any lesser interest determined by the commission to be reasonably necessary to accomplish the purposes of the Highway Beautification Act [67-12-1 to 67-12-14 N.M.S.A. 1978]. The acquisition may be by gift, agreement, purchase, exchange, condemnation or otherwise. Acquisition through condemnation shall be in accordance with Sections 42-2-1 through 42-2-21 N.M.S.A. 1978.

C. Acquisition of any land under this section is for highway purpose.

APPENDIX B

EXCERPTS FROM THE NEW MEXICO OUTDOOR ADVERTISING RULES AND REGULATIONS (PROMULGATED PURSUANT TO THE AUTHORITY OF §67-12-5 N.M.S.A. (1978 COMP.))

* * *

1050.00 Definitions

* * *

22. "On-premise sign" means:

a. sign which advertises activities conducted on the property upon which the sign is located; and

b. is located within the area actually utilized for the purpose of the activity it advertises.

* * *

28. "Unzoned area" means an area which has not been zoned by a properly constituted zoning authority according to legally prescribed procedure.

29. "Unzoned commercial or industrial area" means any unzoned lands upon which there is located a bona fide commercial or industrial activity operating for at least six (6) continuous months of the year with a valid 12 months business license issued by a city, county or the state, whether or not a permanent structure is located thereon, and the area along the highway extending outward 1,000 feet from and beyond the edge of such commercial or industrial activity and extending perpendicular from the center line to a depth of 660 feet from the nearest edge of the right-of-way line on the same side of the highway as the commercial or industrial activity.

* * *

33. "Zoned industrial or commercial areas" means those areas which are reserved for business, commerce, trade, manufacturing, or industry, pursuant to a validly promulgated state or local ordinance or regulation.

1051.00 Classes of Signs Allowed

No outdoor advertising devices shall be erected or maintained except:

1. Directional and other official signs and notices.

2. Signs, displays, and devices advertising the sale or lease of specific properties upon which they are located.

3. On premise signs.

4. Signs, displays, and devices located within 660 feet of the nearest edge of the right-of-way in areas which are zoned as industrial or commercial under authority of law.

5. Signs, displays, and devices located within 660 feet of the nearest edge of the right-of-way in unzoned industrial or commercial areas.

6. Signs lawfully in existence on October 22, 1965, determined by the State Highway Commission, subject to any necessary federal approval, to be landmark signs of historic or artistic significance worthy of preservation including signs on farm structures or natural surfaces.

7. Signs lawfully in existence on the effective date of the Highway Beautification Act and which are continuing to exist.

APPENDIX C

23 U.S.C. § 131

§ 131. Control of Outdoor Advertising.

(a) The Congress hereby finds and declares that the erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to the Interstate System and the primary system should be controlled in order to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty.

(b) Federal-aid highway funds apportioned on or after January 1, 1968, to any State which the Secretary determines has not made provision for effective control of the erection and maintenance along the Interstate System and the primary system of outdoor advertising signs, displays, and devices which are within six hundred and sixty feet of the nearest edge of the right-of-way and visible from the main traveled way of the system, and Federal-aid highway funds apportioned on or after January 1, 1975, or after the expiration of the next regular session of the State legislature, whichever is later, to any State which the Secretary determines has not made provisions for effective control of the erection and maintenance along the Interstate System and the primary system of those additional outdoor advertising signs, displays and devices which are more than six hundred and sixty feet off the nearest edge of the right-of-way, located outside of urban areas, visible from the main traveled way of the system, and erected with the purpose of their message being read from such main traveled way, shall be reduced by amounts equal to 10 per centum of the amounts which would otherwise be apportioned to

such State under section 104 of this title, until such time as such State shall provide for such effective control. Any amount which is withheld from apportionment to any State hereunder shall be reapportioned to the other States. Whenever he determines it to be in the public interest, the Secretary may suspend, for such periods as he deems necessary, the application of this subsection to a State.

(c) Effective control means that such signs, displays, or devices after January 1, 1968, if located within six hundred and sixty feet of the right-of-way and, on or after July 1, 1975, or after the expiration of the next regular session of the State legislature, whichever is later, if located beyond six hundred and sixty feet of the right-of-way, located outside of urban areas, visible from the main traveled way of the system, and erected with the purpose of their message being read from such main traveled way, shall, pursuant to this section, be limited to (1) directional and official signs and notices, which signs and notices shall include, but not be limited to, signs and notices pertaining to natural wonders, scenic and historical attractions, which are required or authorized by law, which shall conform to national standards hereby authorized to be promulgated by the Secretary hereunder, which standards shall contain provisions concerning lighting, size, number, and spacing of signs, and such other requirements as may be appropriate to implement this sections, (2) signs, displays and devices advertising the sale or lease of property upon which they are located, (3) signs, displays, and devices including those which may be changed at reasonable intervals by electronic process or by remote control, advertising activities conducted on the property on which they are located, (4) signs lawfully in existence on

October 22, 1965, determined by the State, subject to the approval of the Secretary, to be landmark signs, including signs on farm structures or natural surfaces, of historic or artistic significance the presevation of which would be consistent with the purposes of this section, and (5) signs, displays, and devices advertising the distribution of nonprofit organizations of free coffee to individuals traveling on the Interstate System or the primary system. For the purposes of this subsection, the term "free coffee" shall include coffee for which a donation may be made, but is not required.

(d) In order to promote the reasonable, orderly and effective display of outdoor advertising while remaining consistent with the purposes of this section, signs, displays, and devices whose size, lighting and spacing, consistent with customary use is to be determined by agreement between the several States and the Secretary, may be erected and maintained within six hundred and sixty feet of the nearest edge of the right-of-way areas adjacent to the Interstate and primary systems which are zoned industrial or commercial under authority of State law, or in unzoned commercial or industrial areas as may be determined by agreement between the several States and the Secretary. The States shall have full authority under their own zoning laws to zone areas for commercial or industrial purposes, and the actions of the States in this regard will be accepted for the purposes of this Act [23 U.S.C.S. §§ 131 and notes, 135 note, 136, 319]. Whenever a bona fide State, county, or local zoning authority has made a determination of customary use, such determination will be accepted in lieu of controls by agreement in the zoned commercial and industrial areas within the geographical jurisdiction of such authority. Nothing in this subsection shall apply to signs,

displays, and devices referred to in clauses (2) and (3) of subsection (c) of this section.

(e) Any sign, display, or device lawfully in existence along the Interstate System or the Federal-aid primary system on September 1, 1965, which does not conform to this section shall not be required to be removed until July 1, 1970. Any other sign, display, or device lawfully erected which does not conform to this section shall not be required to be removed until the end of the fifth year after it becomes nonconforming.

(f) The Secretary shall, in consultation with the States, provide within the rights-of-way for areas at appropriate distances from interchanges on the Interstate System, on which signs, displays, and devices giving specific information in the interest of the traveling public may be erected and maintained. The Secretary may also, in consultation with the States, provide within the rights-of-way of the primary system for areas in which signs, displays, and devices giving specific information in the interest of the traveling public may be erected and maintained. Such signs shall conform to national standards to be promulgated by the Secretary.

(g) Just compensation shall be paid upon the removal of any outdoor advertising sign, display, or device lawfully erected under State law and not permitted under subsection (c) of this section, whether or not removed pursuant to or because of this section. The Federal share of such compensation shall be 75 per centum. Such compensation shall be paid for the following:

(A) The taking from the owner of such sign, display, or device of all right, title, leasehold, and interest in such sign, display, or device; and

(B) The taking from the owner of the real property on which the sign, display, or device is located, of the

right to erect and maintain such signs, displays, and devices thereon.

(h) All public lands or reservations of the United States which are adjacent to any portion of the Interstate System and the primary system shall be controlled in accordance with the provisions of this section and the national standards promulgated by the Secretary.

(i) In order to provide information in the specific interest of the traveling public, the State highway departments are authorized to maintain maps and to permit information directories and advertising pamphlets to be made available at safety rest areas. Subject to the approval of the Secretary, a State may also establish information centers at safety rest areas and other travel information systems within the rights-of-way for the purpose of informing the public of places of interest within the State and providing such other information as a State may consider desirable. The Federal share of the cost of establishing such an information center or travel information system shall be that which is provided in section 120 for a highway project on that Federal-aid system to be served by such center or system.

(j) Any state highway department which has, under this section as in effect on June 30, 1965, entered into an agreement with the Secretary to control the erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to the Interstate System shall be entitled to receive the bonus payments as set forth in the agreement, but no such State highway department shall be entitled to such payments unless the State maintains the control required under such agreement: *Provided,* That permission by a State to erect and maintain information displays which may be changed at reasonable intervals by electronic process

or remote control and which provide public service information or advertise activities conducted on the property on which they are located shall not be considered a breach of such agreement or the control thereunder[.] Such payments shall be paid only from appropriations made to carry out this section. The provisions of this subsection shall not be construed to exempt any State from controlling outdoor advertising as otherwise provided in this section.

(k) Subject to compliance with subsection (g) of this section for the payment of just compensation, nothing in this section shall prohibit a State from establishing standards imposing stricter limitations with respect to signs, displays, and devices on the Federal-aid highway systems than those established under this section.

(l) Not less than sixty days before making a final determination to withhold funds from a State under subsection (b) of this section, or to do so under subsection (b) of section 136, or with respect to failing to agree as to the size, lighting, and spacing of signs, displays, and devices or as to unzoned commercial or industrial areas in which signs, displays, and devices may be erected and maintained under subsection (d) of this section, or with respect to failure to approve under subsection (g) of section 136, the Secretary shall give written notice to the State of his proposed determination and a statement of the reasons therefor, and during such period shall give the State an opportunity for a hearing on such determination. Following such hearing the Secretary shall issue a written order setting forth his final determination and shall furnish a copy of such order to the State. Within forty-five days of receipt of such order, the State may appeal such order to any United States district court for such State, and upon the filing

of such appeal such order shall be stayed until final judgment has been entered on such appeal. Summons may be served at any place in the United States. The court shall have jurisdiction to affirm the determination of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the United States court of appeals for the circuit in which the State is located and to the Supreme Court of the United States upon certiorari or certification as provided in title 28, United States Code, section 1254 [128 U.S.C.S. § 1254]. If any part of an apportionment to a State is withheld by the Secretary under subsection (b) of this section or subsection (b) of section 136, the amount so withheld shall not be reapportioned to the other States as long as a suit brought by such State under this subsection is pending. Such amount shall remain available for apportionment in accordance with the final judgment and this subsection. Funds withheld from apportionment and subsequently apportioned or reapportioned under this section shall be available for expenditure for three full fiscal years after the date of such apportionment or reapportionment as the case may be.

(m) There is authorized to be appropriated to carry out the provisions of this section, out of any money in the Treasury not otherwise appropriated, not to exceed $20,000,000 for the fiscal year ending June 30, 1966, not to exceed $20,000,000 for the fiscal year ending June 30, 1967, not to exceed $2,000,000 for the fiscal year ending June 30, 1970, not to exceed $27,000,000 for the fiscal year ending June 30, 1971, not to exceed $20,500,000 for the fiscal year ending June 30, 1972, and not to exceed $50,000,000 for the fiscal year ending June 30, 1973. The provisions of this chapter [23

U.S.C.S. §§ 101-144] relating to the obligation, period of availability and expenditure of Federal-aid primary highway funds shall apply to the funds authorized to be appropriated to carry out this section after June 30, 1967.

(n) No sign, display, or device shall be required to be removed under this section if the Federal share of the just compensation to be paid upon removal of such sign, display, or device is not available to make such payment.

(o) The Secretary may approve the request of a State to permit retention in specific areas defined by such State of directional signs, displays, and devices lawfully erected under State law in force at the time of their erection which do not conform to the requirements of subsection (c), where such signs, displays, and devices are in existence on the date of enactment of this subsection and where the State demonstrates that such signs, displays, and devices (1) provide directional information about goods and services in the interest of the traveling public, and (2) are such that removal would work a substantial economic hardship in such defined area.

(p) In the case of any sign, display, or device required to be removed under this section prior to the date of enactment of the Federal-Aid Highway Act [Amendments] of 1974 [Jan. 4, 1975], which sign, display, or device was after its removal lawfully relocated and which as a result of the amendments made to this section by such Act is required to be removed, the United States shall pay 100 per centum of the just compensation for such removal (including all relocation costs).

(q) (1) During the implementation of State laws enacted to comply with this section, the Secretary shall encourage and assist the States to develop sign controls and programs which will assure that necessary directional

information about facilities providing goods and services in the interest of the traveling public will continue to be available to motorists. To this end the Secretary shall restudy and revise as appropriate existing standards for directional signs authorized under subsections 131(c) and 131(f) to develop signs which are functional and esthetically compatible with their surroundings. He shall employ the resources of other Federal departments and agencies, including the National Endowment for the Arts, and employ maximum participation of private industry in the development of standards and systems of signs developed for those purposes.

(2) Among other things the Secretary shall encourage States to adopt programs to assure that removal of signs providing necessary directional information, which also were providing directional information on June 1, 1972, about facilities in the interest of the traveling public, be deferred until all other nonconforming signs are removed.